**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 16**

Denton, Texas

**STARBUCKS CORPORATION**

**Employer**

**and** **Case 16-RC-293512**

**WORKERS UNITED**

**Petitioner**[1]

## DECISION AND DIRECTION OF ELECTION

Starbucks Corporation (Employer), headquartered in Seattle, Washington, operates a chain of over 9,000 coffee stores throughout the United States. Workers United (Petitioner) filed the instant petition with the National Labor Relations Board (Board) under Section 9(c) of the National Labor Relations Act (Act) seeking to represent a unit of all full-time and regular part-time baristas, shift supervisors and assistant store managers employed by the Employer at its store located at 2320 W. University Drive, Denton, Texas (Store 16766). The Employer contends that the petitioned-for unit limited to a single store is not appropriate. It maintains that the smallest appropriate unit must include all four (4) Employer-owned stores located in Denton, Texas, including Store 16766.[2] There are approximately 40 employees in the petitioned-for unit comprised of about 32 baristas, 7 shift supervisors and an assistant store manager. There are approximately 139 employees in the wider unit sought by the Employer.[3]

The parties also disagree over the method of the election, with the Petitioner seeking a mail ballot election since a substantial portion of employees are college students, many of whom will be away for the summer after May 5 and 6, when the University of North Texas and TWU[4] complete their spring semesters. The Employer prefers a manual election in accord with the

[1] To the extent the formal documents did not correctly reflect the parties' names, the parties moved to amend the formal documents to accurately reflect the names as identified herein.

[2] The parties stipulate that the four stores at issue in Denton, Texas are: Store 16766 – 2320 W. University Drive; (petitioned-for store); Store 9966 – 401 W University Drive; Store 11149- 2300 S. Loop 288; and Store 50367- 4910 Teasley Lane.

[3] The parties generally refer to Starbucks employees as "partners," consistent with the Employer's internal terminology. I will favor the term "employee" throughout this decision to maintain consistency with the definitions of the Act and the language of Board precedent.

[4] I take administrative notice that TWU stands for Texas Woman's University.

longstanding Board preference that elections be held in person and argues that employees leaving for a time period does not make a manual election infeasible.

A hearing officer of the Board heard this case by videoconference during which the parties entered into several stipulations. At the outset, the hearing officer set forth the Board's presumption for a single-store unit in the retail industry and the burden for rebutting the presumption, including the Board's standard of specific detailed evidence, and also informed the parties that the method of election would not be litigated.[5] The parties were offered an opportunity to present evidence and set forth their arguments. Both parties filed post-hearing briefs. Based on a review of the record,[6] Board law, and in consideration of the parties' arguments and briefs, I have determined that the Employer has failed to rebut the presumption that a single-facility unit is appropriate. In addition, I find that due to COVID-19 concerns, particularly the positivity rate in Denton County, I am directing a mail ballot election in the petitioned-for unit.[7]

## I. ISSUES AND POSITIONS OF THE PARTIES

The petition before me is one of several hundred filed by Petitioner to represent the Employer's employees in single-store bargaining units throughout the United States. As noted, the first issue before me is whether the petitioned-for single store unit, limited to Store 16766, is an appropriate unit for collective bargaining or whether any unit must include all four Denton stores (Denton market). The Employer has a heavy burden to overcome the Board's longstanding

[5] The determination over the method of election is within the discretion of the Regional Director, and therefore, it was not a subject of litigation at hearing. NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11128 and Section 11301.2 (Casehandling Manual).

[6] The parties stipulated that the witness testimony and exhibits from Case Nos. 03-RC- 282115, 03-RC-282127 and 03-RC-282139 (collectively, "*Buffalo I*"), Case Nos. 03-RC-285929, 03-RC-285986 and 03-RC-285989 (collectively, "*Buffalo II*"), Case No. 28-RC- 286556 ("*Mesa I*"), Case No. 28-RC-289033 ("*Mesa II*"), Case No. 19-RC-287954 ("*Seattle I*") and Case No. 19-RC-288594 ("*Eugene I*") are incorporated by reference into the record for the above-captioned case. They further agreed that they would specifically identify record citations by case number, transcript number and exhibit number and the Region would not consider evidence that is not specifically cited.

With respect to the following R-cases, the Board has denied the Employer's Requests for Review of the Regional Directors' Decisions and Directions of Election and found that the Employer failed to rebut the single-store presumption as follows: *Starbucks Corp. (Buffalo I*), 2021 WL 5848184 (December 7, 2021); *Starbucks Corp. (Buffalo II),* 2022 WL 685506 (March 7, 2022); *Starbucks Corp. (Starbucks Mesa I)*, 371 NLRB No. 71 (February 23, 2022); *Starbucks Corp*. (*Seattle I*); 19-RC-287954 (March 22, 2022); and *Starbucks Corp*. (*Eugene 1*), 19-RC-288594 (April 12, 2022). For similar reasons, the Board has also denied the Employer's Requests for Review in the following cases: *Starbucks, Corp*. (*Knoxville*), 10-RC-288098 (March 23, 2022); *Starbucks Corp*. (*Illinois*), 13-RC-288995 (April 19, 2022); *Starbucks Corp. (Hopewell)*, 22-RC-288780 (April 19, 2022); *Starbucks, Corp*. *(Eugene II*), 19-RC-289815, et al. (April 27, 2022); *Starbucks Corp*. (*Hamilton*), 22-RC-291263 (April 27, 2022) and *Starbucks Corp. (Eugene III)*, 19-RC-291410 and 19-RC-291441 (May 4, 2022).

[7] The parties stipulated that any unit found appropriate must include all full-time and regular part-time baristas and shift supervisors and must exclude office clerical employees, store managers, professional employees, guards, and supervisors as defined in the Act. The parties further agreed that there is one assistant store manager at the petitioned-for store and two assistant store managers among the four stores. The Employer contends the assistant store managers are supervisors under the Act and should be excluded. The parties agreed to vote the assistant store manager(s) subject to challenge.

presumption that single-facility units are appropriate. *Starbucks Corp. (Mesa I)*, 371 NLRB No. 71, slip op. at 1 (2022) (citing *Haag Drug*, 169 NLRB 877, 877 (1968) (petitioned-for single store unit in retail chain is presumptively appropriate). To rebut that presumption, "the Employer 'must demonstrate integration so substantial as to negate the separate identity of the single store unit.'" *Id.* (quoting *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). See also *Starbucks Corp. (Buffalo 1)* and *Starbucks Corp.* (*Buffalo II)*, supra.

The Employer acknowledges the single-store presumption is applicable to the present case. However, the Employer contends that it has successfully rebutted the presumption. It argues that the Denton stores operate as one functionally integrated unit; the Employer centrally controls operations and labor relations and the store manager has little or no autonomy; employees' skills, functions, working conditions and duties are nearly identical; employees enjoy the same wages and benefits and are subject to the same policies; the four stores are geographically close to one another; there is high degree of employee interchange; and that despite the absence of bargaining history, employees throughout the Denton market share similar interests. The Employer further maintains that the petitioned-for unit is not conducive to labor relations and directing an election in a single-store unit would violate Section 9(c)(5) of the Act.

The Petitioner counters that the Employer has failed to rebut the presumption inasmuch as the Employer presented substantially the same inadequate evidence as it has in prior cases. It argues that not a single operational or labor relations matter is controlled at the city level and that there is minimal interchange between the four stores and, consequently, the Employer's evidence here is even weaker than in previous hearings in which the Employer unsuccessfully sought a districtwide unit.

Regarding the method of election, the Employer seeks a manual election in accord with the longstanding Board preference to hold elections in person. It argues that regions have had to rerun numerous mail ballot elections and a manual election would decrease the likelihood of procedural problems and is not infeasible. The Union contends employees have "scattered" schedules and that a significant number leave after colleges/universities in Denton end their academic year and a that mail ballot election would prevent the disenfranchisement of bargaining unit employees.

## II. FACTS

### A. Overview of the Employer's Operations

The parties stipulated that all four Denton stores conduct substantially the same business as stores that were involved in Cases 03-RC-282115, et al., 03-RC-285929, et al., 28-RC-286556, 28-RC-289033, 16-RC-290302 and 16-RC-292111. The Employer structures its North America operations into 12 regions which are further divided into areas and districts. The petitioned-for store, Store 16766, also known as the "Rayzor Ranch" store, is in District 650, Area 119, in Region 6 (the South Central Region). Store 16766 is managed by Store Manager Nikki Shalley who has held this position since September 2021. The Assistant Store Manager is Joc Gonzales. There are 13 stores in District 650 and the district is overseen by District Manager Kali Kuenstler.[8] These 13

[8] Kuenstler and baristas Moorooa Amassyali and Carter Dorn testified during this hearing. Store manager Shalley did not testify.

stores are in various North Texas cities and towns, specifically, Frisco, Gainesville, Decatur, Bridgeport, Hickory Creek, Cross Roads, and Denton. Kuenstler reports to Regional Director Chris Monzingo. The Vice President of Regional Operations is Traci York.

The petitioned-for store is located in Rayzor Ranch Marketplace, a shopping mall in Denton, and consists of a café and drive thru, having three channels of production where customers order food, beverages or product at the front register, by the mobile order pay system, or via the drive-thru channel. Of the three remaining Denton stores, two are café and drive thru and one is a "café only" store.

**B. Control Over Daily Operations, Labor Relations and Local Autonomy**

The Employer has centrally determined guidelines concerning the ratio of stores to population in a particular area which, in general, is 10,000 people to a store. The decision to open and close stores in the Denton market occurs at the corporate level and store managers are not involved in those decisions.

The Employer maintains several corporate manuals outlining nationwide standards and policies such as the "Partner Guide," which is an employee handbook including the Employer's general rules and policies, employee programs and benefits; a "Store Operations Manual," a comprehensive guide covering terms and conditions of employment and daily practices; and an "Ops Excellence Field Manual," detailing the roles and responsibilities of baristas, shift supervisors, store managers, district managers and regional directors and identifying tools and resources they can leverage.

Partner Resources is the Employer's centralized human resource department, which houses particularized departments focusing on distinct human resource matters. The Partner Contact Center (PCC) is a human resource call center that a store manager, or any employee, may call for human resource assistance. Questions may be answered by the PCC representative or the caller may be directed to other Employer human resource support centers such as the Business Ethics and Compliance team (E&C), responsible for addressing issues relating to harassment and discrimination or to the Partner Relations Center, which handles general workplace concerns and human resource matters. Employees may also contact those centralized teams directly. Depending on the nature of the employee concern, the district manager and/or store manager may be notified of the employee complaint or concern. There is also a Partner Resources Manager dedicated to all of District 650.

It is clear that providing product consistency throughout the country is of primary importance for the Employer. Decisions concerning product selection, pricing, store design, equipment and maintenance, marketing and promotions, store budgets, and contracts with third parties are made at the corporate level. In this regard, approximately six times per year, the Employer issues a national planning guide, which includes promotions to be implemented and special food or drink items to be offered at all stores. The Employer also distributes the "Siren's Eye" which is a visual merchandizing tool that dictates to stores how product should be displayed, including the particular manner to present menu boards, food cases, and wall bays. It provides instructions, for example, on where items should be placed, how a sandwich should be cut and the temperature at which food should be maintained. Store managers should not deviate from the

operational guidelines outlined. However, in the event that product has sold out or is missing, the store manager is allowed to deviate from the Siren's Eye, with Kuenstler's approval.

All stores in Denton, and in the district, use the same product and supplies. They receive daily product from a common central distribution center and weekly product from the same regional distribution center that services all of Texas.

The Employer has implemented various technologies administered at the corporate level to assist with ordering supplies, scheduling, store operations, and the application of human resources policies. In this regard, inventory and ordering are controlled through the Employer's Inventory Management System (IMS). Store managers, assistant store managers and shift supervisors order and transfer product, beverages, and supplies through this centralized system. Stores' anticipated needs are projected by the "Par Builder" tool which generates what the "par" should be for various items based on sales history, forecasts and trend data. The Employer's IMS offers each store a suggested order quantity (SOQ) which is based on the store's sales history, product mix, and par. Store managers are not required to accept the SOQs but if there is a cap to the product/supply, the store manager or shift supervisor may not order beyond the cap. There is no specific evidence detailing how Shalley manages the petitioned-for store's inventory on a day-to-day basis.

Moreover, the Employer launched a limited automated ordering system for seasonal products, packaged food and lobby products, such as at-home coffee, gift cards, and ready-to-drink products, which does not require involvement by the store manager. This automated system is not currently utilized for supplies or products prepared in-store, however, the Employer has plans to launch an automated system for ordering beverage and paper products later this year. Kuenstler testified that the Employer does a good job balancing product within the district but if a store happens to run out of product, a store manager will likely communicate through the Employer's "Work Chat" (texting forum) and stores will share product. This occurs on a daily basis. Anyone can pick up product/supplies but the record fails to disclose how often petitioned-for employees, as opposed to the store manager, retrieve product from other stores.

Regarding facilities and equipment maintenance, employees can report problems to the Employer's Facilities Contact Center by phone or via the Employer iPads. Kuenstler testified that she and the facilities services manager work through the tickets together but it is not clear her role in this process. The facilities services manager is responsible for securing an outside contractor if one is required.

Kuenstler, who has been the district manager for about 2 and one-half years, testified that she visits the stores in her district, including the four Denton stores, about once every other week. However, for the past four months, she has been at the petitioned-for store more frequently, on a near weekly basis, because store managers and assistant store managers have been training at this store. She visits the Denton stores for period planning visits; "quick connects" to talk to the store manager or with employees who have concerns; coach and observe visits to view how the store is running operationally; and for personal development conversations (PDCs). The Employer did not offer any examples of "quick connects" or PDCs that the district manager had with store employees. Kuenstler also conducts administrative work while at the store and sits in the café so as to observe store operations while working.

Kuenstler explained that she has conducted assimilation meetings with employees of three Denton stores, wherein the store manager was not present, for the purpose of garnering feedback on store leadership. It is unclear whether such a meeting was held at Store 16766. She also conducts "roundtables" with a small group of "leaders."[9] In addition, she has attended shift supervisor meetings, is involved with shift supervisor development days involving all four stores, and she also conducts barista training classes. The nature and frequency of these shift supervisor meetings, development days and barista training classes, and Kuenstler's specific role and duties during these functions, is not clear.

In addition to this in-person contact, the district manager has access to a variety of store information including labor hours, employee schedules, sales, and corporate communications with stores through corporate technology. Kuenstler is also in contact with store managers in her district through the Employer's Work Chat, phone calls and email. She receives weekly "recap" emails from all store managers that recount information from the prior week and provide store updates, among other things. Her cell phone number is posted in the back of the stores and is available to all employees. Kuenstler is contacted by employees daily, however, no testimony was provided identifying the particular reason for, or nature of, this contact.

Baristas Moorooa Amassyali and Carter Dorn, who have worked at the petitioned-for store since September 2021 and September 2020, respectively, recalled attending a meeting in November 2021, conducted by Kuenstler, in order to get to know the new store manager. Apart from this meeting, their contact with her has been limited. Amassyali had contact with her when Amassyali transferred to the district and they both see Kuenstler in passing at the store and extend greetings.

The leadership structure at Store 16766, consistent with stores nationwide, includes a store manager who oversees the daily operations of the store, followed by an assistant store manager (ASM), and then a shift supervisor. According to the Employer's *Partner Guide* the "store manager is ultimately in charge of all store operations and directs the work of the assistant store manager(s), […] shift supervisors, and baristas. The store manager is responsible for personnel decisions, scheduling, payroll, and fiscal decisions." The *Partner Guide* directs employees to contact the store manager with questions over dress code, time off requests and other Employer policies, standards and procedures. When a store manager is not at work, the assistant store manager is in charge of daily operations at the store. When a store manager is on vacation, he/she is responsible for finding a store manager "proxy," that is, someone to be responsible for the store in the store manager's absence. This can be another store manager, usually whose own store is in close geographical proximity, or an assistant store manager. In addition, "Key holders" references persons in charge of the cash.

Certain remodeling and upgrading of Denton market stores has occurred recently. For example, at the petitioned-for store, space was added in the "hand-off" area (where employees hand off beverages to customers) and a third bar was installed. Kuenstler testified that she and the store managers, with support from the facility manager and approval by the Regional Director,

[9] The district manager used the word leader(s) at various times and it appears she is referencing the store manager and assistant store manager.

made decisions on upgrades.[10] The money for these improvements is derived from the regional overhead budget covering all of Area 119.

### 1. Hiring, Promotions and Transfers

All applicants apply through the Employer's career website. Applicants for positions in the Denton market, and nationwide, complete the same job application and answer identical pre-screening questions. Once a store manager makes an offer, all employees nationwide undergo a background check. Applications are processed and maintained in the Employer's hiring and application tracking platform, "Taleo." Store managers share applications within the Denton market, but there is no indication that they are limited to sharing only to Denton stores. Kuenstler testified that she holds talent planning meetings, with store managers present, every 45 to 60 days in the district wherein "we" examine the number of transfers and the number of employees who need to be hired districtwide.[11]

In Denton, store managers interview candidates for the barista and shift supervisor positions. Kuenstler explained that store managers must use a specific "interview deck" of questions, however, there is no evidence whether, or the extent to which, the store manager at Store 16766 utilizes these set of questions. Kuenstler further testified, without pointing to any specific examples, that she has participated in interviews and might do so if the store manager is new or struggling with turnover, or if a store is considering hiring an external candidate for a shift supervisor position. It is clear that for barista positions, store managers have the authority to independently interview and decide whom to hire. If an employee is being rehired, the district manager must be "looped in," along with Partner Relations, to ensure the applicant is rehireable. Dorn applied to the petitioned-for store specifically and he was interviewed by the prior store manager and the prior store manager offered him the barista position.

Shift supervisor vacancies may be filled externally or internally by promoting baristas. Kuenstler testified that when hiring externally this "is something I like to be a part of." Regarding promoting baristas to shift supervisors, Kuenstler initially testified that the store managers make these decisions. Thereafter, she testified that she has to be involved in the promotion and the nature of her involvement is that she is "partnered with." She has disagreed with a store manager's recommendation to promote a barista about 20 percent of the time, but she has not disagreed with a promotion recommendation at the petitioned-for store. Nevertheless, the record did not disclose whether her disagreement with a recommendation altered the outcome.[12]

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[10] In its post-hearing brief, the Employer states that store managers play no role in decisions regarding upgrades and renovations. However, Kuenstler testified to recent upgrades at various stores and when asked who makes the decisions about these, she replied, "that would be myself, with the Store Manager, and then we would need our Facility Manager's support with our Regional Director approval."

[11] In its post-hearing brief, the Employer notes that Denton store managers also participate in these meetings. It is not clear who ultimately decides and authorizes hiring for this district or for the Denton stores, but it does not appear that it is the store manager's decision.

[12] I also note that in its post-hearing brief the Employer acknowledged that store managers interview and hire baristas *and* shift supervisors. The *Partner Guide* provides that the hiring of store employees belongs to each store manager.

The district manager is involved in every employee transfer to and from District 650. The employee seeking a transfer must complete a transfer request form and submit it to their current store manager, who submits it to the current district manager. The current district manager then gives the request to the district manager in the receiving district. The receiving district manager must approve the transfer. The record reflects that store managers are involved in this process as well. The transfer request form seeks the approval of the outgoing store manager. Amassyali testified that they were instructed to contact Denton store managers to see if they would accept a transfer and that they had to be accepted by a store manager to work at that location. They spoke to two Denton store managers during this process, including one from the petitioned-for store, and was ultimately given two job offers. In this same vein, Kuenstler reached out to Shalley to determine whether there was space at Store 16766 for Amassyali. Amassyali had a "little bit" of contact with the district manager during this process but the record failed to provide any details surrounding this contact.

**2. Discipline**

The same corrective action form is used throughout the Denton market, and the country, providing for a "documented coaching," "written warning," and a "final written warning." There is no space on this form for the district manager's signature. The Employer supplies tools to guide store managers with issuing discipline to aid in making discipline fair and consistent throughout the country. In particular, there is a "Virtual Coach" technology to assist in determining the appropriate corrective action in response to particular conduct. A store manager chooses from topics, such as "attendance and punctuality," and then accesses a drop-down menu to limit the focus of the problem, ultimately reaching a result. For example, once the attendance and punctuality topic is chosen, the drop-down menu will narrow the topic by subtopics such as "tardiness" or "no call/no show." If the tardiness subtopic is selected, the Virtual Coach asks five questions, including "if the partner arrived late to a scheduled shift, were there any extenuating circumstances?" and "has the partner mentioned an inability to comply with the Starbucks Attendance and Punctuality policy due to religious or medical reasons?" If the store manager answers all five questions in the negative the result is, "Documented Coaching is consistently recommended for a first-time policy violation." The tool also informs store managers that it "is intended to complement, not replace your active assessment and judgement," and that the listed examples of unprofessional behaviors, for example, "are not all inclusive. If a behavior is not listed below, the store manager has the discretion to determine the appropriate type of corrective action for their partners." Kuenstler testified that Denton store managers use the Virtual Coach. As noted, Shalley did not testify, and the record lacked specific evidence regarding her use of this tool and there is no evidence that she has ever been disciplined for failing to use it.

In contrast to many prior cases involving the Employer, here, Kuenstler testified that a store manager may not issue any form of corrective action without her involvement and that she needs to "be looped in" and aligned with the decision. The district manager usually agrees with the store managers' decision to issue discipline but may not agree with the level of discipline recommended. The record failed to demonstrate how often and under what circumstances she has disagreed with a disciplinary recommendation and how the matter was resolved. There is no evidence showing

what, if any, independent investigation the district manager conducts in deciding whether to agree with a store manager's recommendation to discipline an employee.[13]

The evidence reflects that in September 2021, a former store manager at the petitioned-for store emailed Kuenstler stating, "[w]e discussed a documented coaching last week . . . I feel like a written warning might be more appropriate. What are your thoughts?" and attached a proposed written warning. Similarly, in a recap email from Store 11149 (a Denton store) the store manager, having concerns regarding attendance, relayed that he was going to review timecard statements and planned to have corrective action conversations with any employee that had been late or missed 20 percent of their shifts and would give them the next period to improve performance or face further corrective action or separation. He asked Kuenstler to let him know if she agreed with this course of action. She replied that she fully supported this plan. Kuenstler further testified that she created an "action plan" with Shalley for an employee at the petitioned-for store outlining steps for improvement and, under the plan, Shalley had to check in with the employee weekly for 30 days to determine whether the action plan was being implemented.

Kuenstler testified that she is involved in the decision to terminate an employee and supports the creation of the separation document and sometimes participates in the termination meeting. She is responsible for disciplining assistant store managers. The record did not include any examples of terminations at the petitioned-for store or at any of the other Denton stores. There is no evidence that the district manager has rejected a store manager's recommendation to discharge an employee.

**3. Scheduling/Assignment and Direction**

The district manager sets the store hours for the Denton stores. She decides whether to close a store due to the pandemic, and must approve a store manager's request to turn off mobile ordering at a store. Although the *Partner Guide* provides that overtime must be approved in advance by the store manager and an employee who fails to receive approval may be subject to corrective action, Kuenstler testified that she must approve a store manager's request for employees to work overtime. The record did not disclose any examples in which the district manager denied an overtime request.

Store managers are responsible for scheduling employees at their respective stores. Kuenstler testified that the store managers create the weekly schedule with the allotted hours the Employer provides. Store managers are not able to deviate from the forecasted number of hours without the district manager's approval. There is no evidence showing how often the district manager denies a store manager's request to alter the number of hours. In any event, employees submit and update their available hours to the store manager for her approval. Corporate wide "Partner Planning" and "Partner Hours" tools generate an allotted number of hours, and a recommended schedule three weeks in advance for all stores nationwide, based on a demand forecast for each store and employee availability. Kuenstler would become involved in scheduling issues if "the Store

[13] Kuenstler testified that she, and sometimes the store manager, and occasionally other corporate human resource personnel, investigate employee misconduct. She cited an example related to Ethics and Compliance that occurred at a Denton store, not the petitioned-for store. This did not appear related to a recommendation of pre-termination discipline at the petitioned-for store.

Manager is not building an effective schedule, and so we are getting Partner concerns," or if other problems arise. No examples of this occurring at the petitioned-for store were provided.

The testimony reflects that at the petitioned-for store, either the store manager or the assistant store manager approves employees' leave and scheduling change requests. In this same vein, the *Partner Guide* provides that an employee is required to receive approval for vacation, jury/witness duty, bereavement time or military service pay from the store manager. It also provides, "[i]f a partner's availability changes, the partner should complete a new Partner Availability Form and give it to the manager for scheduling consideration . . . the store manager posts weekly work schedules in advance . . . [f]or this reason, a partner should submit a request for planned time off from work to the store manager for approval as far in advance as possible." The Petitioner cited to the incorporated record disclosing that store managers at other locations adjusted schedules as needed for various reasons including employee leave requests, call-offs, or to add staffing due to expected demand. There was no specific testimony regarding the store manager of Store 16766 adjusting the schedule, however, I take notice of the records in other cases which establish that the store manager is generally responsible for creating the day-to-day schedule and approving employees' requests for leave and changes to their schedule. According to this *Partner Guide,* the store manager is responsible for verifying and correcting employees' time records when necessary. It is the store manager's responsibility to secure coverage for when employees call off work last minute for medical or family emergencies.

In addition, the Employer maintains and administers a nationwide tool known as the "Play Builder" tool, which informs the "play caller," who is generally the store manager, assistant store manager or the shift supervisor, where employees should be deployed. For example, Play Builder may designate that six employees should be employed during a set time frame, with one employee at the register, two employees at the bar, one employee at the cold bar, one employee at the oven and one at hand-off. The play caller decides which particular employee will be designated at each location. The play caller can "flex the play," or alter the assignments based on the particular business needs that day. The play caller does not need to obtain approval to change a Play Builder play. The district manager expects the store managers to use this tool, but there is no evidence how often or to what extent it is employed at the petitioned-for store. No discipline has been issued to an employee for failing to use the Play Builder tool, however, Kuenstler believes she has placed an employee on an action plan to advise the employee that using the tool was expected. The record did not disclose where this employee worked.

**4. Training/Evaluations**

The store manager is responsible for onboarding a newly hired employee and the store manager conducts the "First Sip" orientation with each employee, which is the first step of the nationwide "Barista Basics" training plan. At the First Sip orientation, the store manager reviews the Employer's history, culture and the *Partner Guide* with the employee, provides a store tour, and conducts a coffee tasting. Under this plan, a new employee also completes a self-guided training using corporate wide modules, and is also trained by the store manager and a barista trainer[14] who provides the bulk of the hands-on training. Kuenstler testified that the store managers select the barista trainers at their store, "with my support." There is also a standardized shift

[14] A barista who is certified to train newly hired baristas.

supervisor training which is comprised of self-guided training and training conducted by the store manager. Kuenstler testified that she does not usually directly train new employees but has "supported" shift supervisor trainings. Each time she is at a store she reviews employees' training plans and checks that modules have been completed.

Employees do not have to be trained at their home store. Kuenstler testified that there is a new store opening in Bridgeport and these employees are being trained at the petitioned-for store. Amassyali is aware of about five employees/store managers[15] who trained at the petitioned-for store and these employees' home stores were outside of the Denton market, while Dorn estimated that between 5 and 10 employees from other stores have trained at Store 16766.

There is no evidence that the Employer conducts formal evaluations of employees at the petitioned-for store or in the Denton market. Store managers conduct Partner Development Conversations (PDCs) with employees twice a year to discuss an employee's progress and development. Kuenstler testified that she could take part in those conversations. The record lacked any specific examples of her taking part in any PDC or the role she played. Amassyali has only observed the store manager engaging in these conversations. Amassyali has only been "coached" by the store manager, not the district manager.

**5. Grievances/complaints adjustment**

Employees may raise concerns and complaints with numerous people including the shift supervisor, assistant store manager, store manager, district manager, the Partner Contact Center and Partner Relations. Kuenstler testified that employees have raised complaints directly to her "all the time" but the record lacked details surrounding the nature of the complaints or how she addressed them. A store manager is also authorized to resolve conflicts among employees. Dorn testified that when a conflict arises between baristas, they are supposed to inform the shift supervisor who attempts to find a resolution. He is unaware of any instance in which an employee contacted the district manager in such a situation. Dorn also testified that an employee might reach out to district manager if there was a problem with a store manager or if a store manager was contacted and could not resolve the problem.[16]

**C. Employee Skills, Functions and Working Conditions**

Here, the parties agreed that baristas and shift supervisors who work at the petitioned-for store have similar skills and functions as employees in the petitioned-for units in Cases 03-RC-282115 et al., 03-RC-285929 et al., 28-RC-286556, 28-RC-289033, 16-RC-290302 and 16-RC-292111. Although the store layout may vary, baristas nationwide engage with customers, take orders, complete sales transactions, prepare and provide food and beverages, stock the store, and maintain the general upkeep and cleanliness of the store. In addition to barista duties, shift supervisors across the country assign jobs and provide feedback and direction to baristas. All baristas and shift supervisors in the Denton market, and throughout the country, utilize very similar skills to perform their job duties. They enjoy the same tenure-based wages and benefits,[24] including

[15] It appears that Amassyali was including store managers in this calculation; and it is unclear the number of store managers as opposed to employees who were trained in Store 16766.

[16] Dorn testified that he was involved in an instance with the district manager and referenced earlier testimony, but there was no description of such an event in his earlier testimony.

medical coverage, disability coverage, life insurance, parental leave, free coffee and food while working, and tuition reimbursement for degrees through Arizona State University. The same corporate-wide policies, standards and operational procedures govern all Denton baristas and shift supervisors.

**D. Interchange and Contact**

A "borrowed partner" is a term describing an employee who works at a store other than his/her home store. When hired, an employee completes a partner availability form relaying their available and desired hours of work and this form notes that employees, "could also be asked to work at another location to meet the needs of the business or to attain…requested hours." Employee interchange may precede a permanent transfer from one home store to another, or may relate to store openings, temporary store closures, or staffing shortages. Although the Employer's *Partner Guide* states that employees "may be assigned to work at a Starbucks store other than the normal place of work, and the partner will be expected to do so," Kuenstler testified that any borrowing in District 650 is voluntary. The record further reflects, and the data demonstrates, that employees are not restricted to borrowing only within the Denton market.

The Employer provided raw interchange data and related charts and graphs covering the period of April 29, 2019 to March 27, 2022 (relevant period). All analysis excluded store managers. All analysis is limited to intra-market interchange such that both the home store and worked store were in the Denton market [17] The parties stipulated that the Employer did not create and is not in possession of any document showing the percentages of shifts and hours that Denton market borrowed employees worked at the petitioned-for store or showing the percentages of shifts and hours worked by petitioned-for employees at other Denton market stores.

The Employer's graphs and charts reflect the following:

- Approximately 23 percent of employees in the Denton market have worked in two or more stores at least once during the relevant period. Conversely, about 77 percent of employees worked in a single store.
- Approximately 40 percent of employees who have ever worked at the petitioned-for store during the relevant period have worked in two or more stores. Approximately 60 percent of employees worked only in the petitioned-for store.
- There are no stores in the Denton market that have been staffed entirely by employees of their home store during the relevant period. About 60 percent of employees at each Denton store only worked in their home store and about 60 percent of employees at the petitioned-for store only worked in the petitioned-for home store.
- Market wide, about 8 percent of store days (days when a store is open) have required a borrowed partner to work; and the petitioned-for store has required a borrowed partner approximately 9 percent of store days.

[17] The parties stipulated to the authenticity and the admissibility of the Employer's graphic depictions. They further agreed that Dr. Abby Turner, who prepared the analysis and holds a PhD in economics and public policy, is an expert. Dr. Tuner did not testify but prepared a document explaining the meaning of the charts.

- Market wide, the average percent of shifts borrowed was 0.7 percent during the relevant period and there was some level of borrowing each day of the week viewing the Denton market as a whole.[18] This percentage did not change much when removing various factors.[19] Relying on data for the pre-Covid period (April 29, 2019 to February 29, 2020) the average was also 0.7 percent, and considering only employees with a single home store, the average percent of employees borrowed was 0.6 percent.
- During the relevant period, the petitioned-for store has lent to, and borrowed from, each of the other three Denton stores.
- Of the active employees at the Store 16766, the average tenure is 24.7 months and the median tenure is 17 months.

The Petitioner's analysis of the Employer's underlying records reflected the following:

- During fiscal year 2022, thus far,[20]105 shifts out of 3,350 shifts at the petitioned-for store have been worked by borrowed employees from anywhere in the district, constituting 3.13 percent of shifts. Borrowed employees worked 763.48 hours out of 19, 484.45 hours or 3.92 percent of hours.
- Only considering borrowing within the market, not district wide, 15 shifts out of 3,261 shifts at the petitioned-for store, or 0.46 percent, were completed by borrowed employees from other Denton stores. Out of 18,800.17 hours worked, 79.2 hours were performed by employees borrowed from other Denton stores, amounting to 0.42 percent of hours.
- Employees whose home store is the petitioned-for store have worked 29 borrowed shifts out of 3,724 shifts, or 0.89 percent, at other stores in the District; they have worked 165.68 borrowed hours out of 18,887 hours amounting to .88 percent.
- As to borrowing only to the stores in the Denton market, employees from the petitioned-for store have been borrowed for 10 shifts out of 3,255 shifts, or 0.3 percent; and worked 46 hours out of 18,767 hours or 0.25 percent of hours.

Amassyali has been borrowed out to another store, and that was to a store in the Denton market, one time, on Christmas day. Dorn has only worked a borrowed shift one time as well. Both instances of working borrowed shifts were voluntary. Dorn testified that he does not have access to when other stores need coverage which is one reason he does not volunteer at other stores.[21] Moreover, employees do not have the names and contact information of employees from other stores. If employees need to obtain coverage it is not a requirement that they seek help from their home store first but Dorn testified that he calls other stores once he has exhausted all options. He

[18] This chart was titled "Average Percent of Partners Borrowed by Day of Week."

[19] The Employer ran sensitivity tests with the underlying data to determine whether certain factors drive variation. It accounted for variations related to borrowed shifts stemming from COVID, by analyzing data for a limited time period – April 29 2019 to February 29, 2020. To remove the impact of borrowed shifts related to permanent transfers, in one data analysis, the Employer removed from consideration employees who transferred stores and considered only those who worked at a single home store, thereby removing borrowed shifts relating to those transfers.

[20] This is the time period for all of the Petitioner's analyses.

[21] Employees at the petitioned-for store may offer and claim shifts through the Employers Shift Swap in the My Partner Hours application but they are only able to see offered shifts from employees of their own store.

has called other stores twice and was unable to obtain coverage. Dorn estimated it has been over a month since he has worked with a borrowed employee at Store 16766.

The record reflects that Kuenstler receives about 100 to 120 transfer requests to work in the Denton market during the summer season and she cannot accommodate all the requests. There was no specific evidence reflecting the amount of permanent transfers to or from the petitioned-for store, however, all transfers are voluntary. As noted, Amassyali transferred from out of the district to the petitioned-for store last year.

In addition to the employee interchange, there is the districtwide Work Chat that store managers in District 650 use to communicate with each other to ask questions, secure supplies and obtain shift coverage. There is no such district wide group chat exclusively for employees. Moreover, there is no evidence that there is either a management or employee Work Chat limited to the Denton market.

**E. Distance Between Locations**

The two stores furthest from the other (the petitioned-for store and Store 50367) are 8 miles apart while the two stores closest to the other (the petitioned-for store and Store 9966) are 1.6 miles apart.[22] Testimony reflects that the store in District 650 which is furthest away from a Denton store is about 45 miles away.

**F. Bargaining History**

There is no history of collective bargaining at the petitioned-for store or any of the stores at issue in this proceeding.

**G. Method of Election**

Regarding the method of election, the Employer seeks a manual election. It proposed Monday, June 1, from 10:00 a.m. to 11:30 a.m. and from 4:00 p.m. to 5:30 p.m. It initially took the position that conducting the election on its premises, including in a tent on its parking lot, was not feasible because it would be very disruptive of business operations and it proposed holding any election at an off-site hotel. However, in its post-hearing brief, the Employer stated that the Employer had since authorized an election in the store at the times it originally proposed, and confirmed that it is able to comply with the Board's COVID-19 safety protocols. It contends that elections should be held in person unless it is infeasible, and the fact that some employees may transfer does not make a manual election infeasible. As noted previously, the Employer argues that Regions' track record in running mail ballot elections is less than stellar and procedural problems are unlikely to arise in a manual election. Employees rights are best protected by holding a manual election.

As noted, the Petitioner seeks a mail ballot election, but in the event a manual election is directed, it suggests that it be conducted on a Monday, Wednesday or Thursday and requested three voting sessions from 8:30 a.m. to 10:00 a.m., 12:30 p.m. to 2:00 p.m., and 4:00 p.m. to 5:30

[22] These approximate distances were obtained from Google maps based on record addresses.

p.m.[23] It avers that a mail ballot election would be the most appropriate method for an election here inasmuch as employees have "scattered schedules" and that approximately 50 to 75 percent of employees at the petitioned-for store are students,[24] many of whom will leave during the summer, and a manual election would subvert the goal of maximizing participation.

The record does not disclose the exact number of employees who were expected to transfer due to the end of the academic year and whether these transfers would be temporary or permanent.

## III. ANALYSIS

It is well established that Petitioner is not obligated to seek a bargaining unit that is the only appropriate unit, the most appropriate or the ultimate unit. The Act merely requires that the unit found be an "appropriate" unit for purpose of collective bargaining. *Foodland of Ravenswood*, 323 NLRB 665, 666 (1997); *Overnite Transportation Co*., 322 NLRB 723 (1996). See also, *Haag Drug*, 169 NLRB 877, 877 (1968), ("It is elementary that more than one unit may be appropriate among the employees of a particular enterprise"). The unit sought by the Union is always a relevant consideration. *Lundy Packing Co.,* 314 NLRB 1042, 1043 (1994).

A single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated with other facilities that it has lost its separate identity. *Dixie Belle Mills, Inc*., 139 NLRB 629, 631 (1962). The party opposing a single-facility unit bears a "heavy burden" of overcoming the presumption. *Starbucks (Mesa I)*, 371 NLRB slip op. at 1, citing *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). To rebut this presumption, a party "must demonstrate integration so substantial as to negate the separate identity" of the single store unit. *Id.* In determining whether the single-facility presumption has been rebutted, the Board examines: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866, 867 (2003); *J & L Plate, Inc*., 310 NLRB 429, 429 (1993).

Although it has not always been the case, this same single-facility presumption and five-factor analysis apply in the retail chain setting. See *Sav-On Drugs*, 138 NLRB 1032 (1962); *Red Lobster*, 300 NLRB 908, 912 (1990); *Foodland of Ravenswood*, 323 NLRB 665, 666 (1997). The Board, in *Haag Drug*, 169 NLRB 877, 877 (1968), held "[o]ur experience has led us to conclude that a single store in a retail chain, like single locations in multilocation enterprises in other industries, is presumptively an appropriate unit for bargaining." (emphasis in original). However, in the retail setting, as in all other arenas, the single facility presumption is rebuttable. In this regard, the Board concluded, "where an individual store lacks meaningful identity as a self-contained economic unit, or the actual day-to-day supervision is done solely by central office officials, or where there is substantial employee interchange destructive of homogeneity, these circumstances militate against the appropriateness of a single-store unit" *Id*. at 879.

[23] At hearing, the Employer was amenable to these sessions/hours but in its brief it requested the voting hours it proposed initially.

[24] Dorn estimated that at least 75 percent of employees at the petitioned-for stores are college students.

Determining whether a single-facility presumption has been rebutted requires a case-by-case, fact-intensive analysis, as "[e]ach case must be assessed on its own facts." *Dattco, Inc.*, 338 NLRB 49, 50 (2002). See also, *Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964) (Board decided that it would "apply to retail chain operations the same unit policy that it applies to multi-plant enterprises in general, that is... in the light of all the relevant circumstances of the particular case"). To date, the Board, and other Regional Directors, have consistently found the Employer has failed to meet its "heavy burden" to overcome the presumption that single-store units sought by Petitioner are appropriate. *Starbucks Corp.*, 371 NLRB No. 71, slip op. at 1 (2022) (*Mesa I*) (citing *California Pacific Medical Center*, 357 NLRB 197, 200 (2011)).

Considering the relevant factors in light of the facts of this proceeding, I find that the Employer has not met its heavy burden of rebutting the single-facility presumption and that the petitioned-for unit of employees at Store 16766 is an appropriate unit.

**A. Control Over Daily Operations, Labor Relations and Local Autonomy**

The functional integration of two or more plants in substantial respects may weigh heavily in favor of a more comprehensive unit, but it is not a conclusive factor. See *Dixie Belle Mills, Inc*., 139 NLRB 629, 632 (1962); *J&L Plate*, 310 NLRB 429, 430 (1993). The Board has held that a single facility could constitute a separate appropriate unit if the requested facility retained a substantial degree of autonomy, even where there was substantial centralization of authority and considerable product integration between facilities. *The Black and Decker Manufacturing Company,* 147 NLRB 825 (1964).

To a significant extent, the Employer operates a centrally controlled and integrated chain of retail stores throughout the country. Corporate control and standardized procedures govern, among other things, store design and placement, inventory management, vendor selection, store budgets, product pricing, product selection, product launches and displays, and the preparation of food and beverages. Notwithstanding the Employer's evidence of centralized operations, such a circumstance is not considered a primary factor in the consideration of single-store units in the retail industry. *Haag Drug,* 169 NLRB at 878. The existence of these centralized features established at the corporate level does not preclude a finding of local autonomy where the evidence establishes the store manager retains significant control over other aspects of employment.

The Board considers evidence of local autonomy in daily operations and labor relations as key considerations in assessing the appropriateness of single-store units in retail chain operations. For example, in *Haag Drug*, the Board found that one of eleven restaurants operated by an employer in a geographic area was an appropriate unit despite a "high degree of centralized administration," including central profit-and-loss records, payroll functions, and chainwide handling of purchasing, vendor payments, and merchandising. 169 NLRB at 878. In finding the single-facility unit appropriate, the Board noted that the centralized operations bore "no direct relation to the employees' day-to-day work and employee interests in the conditions of their employment." *Id.* at 879. The Board explained:

> More significant is whether or not the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the

> employees, and is personally involved with the daily matters which make up their grievances and routine problems. It is in this framework that the community of interest of the employees in a single store takes on significance, for the handling of the day-to-day problems has relevance for all the employees in the store, but not necessarily for employees of the other stores. *Id.* at 878.

Store Manager Shalley did not testify and the record includes limited evidence regarding how she runs Store 16766 on a daily basis. In large part, Kuenstler's testimony concerning how store managers operate the stores and the methods and tools utilized by them was generalized. In that context, I find that the stores' standardization is outweighed by other evidence of local autonomy in operations and labor relations. I note that employees nationwide are subject to the same personnel policies, employee handbooks/manuals, training plans and wage and benefits programs. Store managers have access to corporate-wide tools and platforms for hiring, scheduling and informing disciplinary decisions. However, here, the evidence failed to show that many of these tools are employed by the store manager at the petitioned-for store. In addition, despite the existence of these nationwide labor policies, the evidence demonstrates that store managers exercise discretion over many important daily operational and labor relations matters manifesting significant local autonomy.

One crucial store manager function illustrative of local autonomy is that store managers are responsible for interviewing and hiring baristas and do not need to obtain the district manager's approval for deciding whom to hire, except when rehiring an employee. Moreover, although Kuenstler provided inconsistent testimony, it appears from the record as a whole that store managers are also primarily responsible for interviewing and hiring/promoting shift supervisors. In this regard, there was no detailed evidence presented showing any specific example in which Kuenstler interviewed a shift supervisor candidate, disagreed with a store manager's recommendation to promote or hire a shift supervisor, or any related evidence that she independently reviewed a candidate or rejected the candidate over a store manager's recommendation. Notably, she has never disagreed with a shift supervisor promotion recommendation at Store 16766. I note, too, that the Employer acknowledged store managers interview and hire shift supervisors. While there are standard interview questions for store managers to use during the interviews there is no evidence that Shalley uses them.

Regarding transfers, undoubtedly, the district manager must approve a transfer request. However, the store manager appears to play a significant role in this process inasmuch as he/she communicates directly with the requesting employee and relays whether there is a position available in the particular store to accept a transferred employee.

The district manager establishes the store hours of operations and authorizes overtime. The store manager, however, is responsible for scheduling store employees each week. She exercise control over staffing by approving or denying availability hours and time off requests. In the event that an employee calls off work with short notice for emergency reasons, the store manager is responsible for securing staffing. The store manager, assistant store manager, or shift supervisor serve as the point person for employees' scheduling issues and updates to their schedules, including shift swaps. Again, although there is a corporate wide scheduling tool which generates a recommended schedule there is no evidence establishing whether, or the extent to which, Shalley follows this generated schedule. In addition, assigning and directing employees to particular job

positions takes place at the store level. Despite evidence that play callers should use the Play Builder tool for guidance, it is not clear whether play callers at Store 16766 in fact use the tool. Nevertheless, it is undisputed that the play caller can "flex the play" and independently alter assignments. Moreover, the play caller, not the tool, is responsible for choosing *who* works at each position. Furthermore, there is no evidence that the store manager or play caller has ever been disciplined for failing to use the Partner Hours system for scheduling or Play Builder for assignments.

Although Kuenstler testified that she seeks to be looped in and aligned with a store manager's decision to issue corrective actions, the record reflects the store manager is responsible for administering discipline. The Employer's Virtual tool is designed to aid the store manager in this process and the corrective action forms are to be signed by the store manager, not the district manager. There were no examples of the district manager disagreeing with a decision to issue discipline or with the particular level of discipline. Similarly, there was no showing that the district manager has conducted any sort of independent investigation concerning a corrective action. Kuenstler's testimony that she is involved in discharge decision was lacking specifics and, again, there is no evidence showing that the district manager has disagreed with a discharge recommendation by a store manager or the effect her disagreement had on the decision. Contrary to the Employer's assertion, using the Virtual Coach does not eliminate the store manager's independent discretion inasmuch as it poses questions for certain situations demanding the exercise of judgment on the store manager's part. Thus, store manager's role in disciplining employees supports the single-store presumption.

The evidence surrounding conflicts and grievances was limited and generalized. Certainly, store managers are authorized to resolve grievances and conflicts. Dorn's testimony reflects that initially most conflicts are addressed at the store level. Kuenstler testified that she is regularly contacted by employees over their concerns but the record failed to provide any examples of this taking place or that she has been involved in any grievance adjustment for employees at Store 16766. Employees may contact corporate wide representatives, however, there was no evidence showing whether, or how often, employees at Store 16766 turn to those sources.

Kuenstler's testimony that she engages in shift supervisor development involving all four stores failed to detail what these were, her role in this process, how often she has held these with Store 16766, and whether only Denton stores were present. Although Kuenstler monitors employees training programs, the record reflects that barista and shift supervisor training, while largely standardized, does include hands-on training involving the store manager and barista trainer, which is implemented at the store level. Moreover, Store managers are primarily responsible for selecting barista trainers.[25] The record also makes plain that it is a store manager's duty to meet with employees for professional development conversations to discuss employees goals and objectives.

I am also mindful that the district manager visits 13 stores on a bi-weekly basis. Based thereon, I find that the district manager is simply not present in Store 16766 to the extent necessary to supervise, observe employee behavior, and identify workplace concerns. Moreover, the district manager's limited time at the petitioned-for store is not necessarily spent in observation and

[25] As noted, Kuenstler testified that store managers select baristas "with my support." The record did not disclose what she meant by "with my support." I find that such testimony, and similar testimony that she has to be "looped in" or "partnered with," without more, is insufficiently detailed.

communication with the petitioned-for employees. See *Renzetti's Market Inc*., 238 NLRB 174, 175-176 (1978) (emphasizing that the daily supervisor is "better able to comment on the job performance of employees over whom he has constant supervision"); *Red Lobster* 300 NLRB 908, 908 fn. 4 (1990) (finding local autonomy even though upper-level supervision in restaurant for a full day about once a week noting that this is "insufficient staffing for persons in these two positions to be present in all restaurants at all times . . . it appears that on some days the most responsible person in the restaurant is the assistant or the associate manager"). I am unconvinced by the Employer's argument that because shift supervisors "share many of the duties on which the Union relies to establish local autonomy" that this undermines Store 16766's local autonomy. Even shared authority at the store level is reflective of local, versus districtwide, authority and the store manager, as noted, is largely responsible for hiring, disciplining and scheduling employees.

The Board has often reached a finding of local autonomy under facts similar to those present here. See *Cargill, Inc*., 336 NLRB 1114, 1114 (2001) (Board found local autonomy where supervisors made assignments, supervised work, scheduled maintenance inspections, imposed discipline, handled initial employee complaints, and scheduled vacations); *Eschenbach-Boysa Co*., 268 NLRB 550, 551 (1984) (Board found local autonomy where store managers conducted interviews, hired employees, granted time off, and resolved employee problems and complaints even though an upper-level manager "reserved for himself many management prerogatives [because] he necessarily must leave many of the day-to-day decisions … to his managers"); *Foodland of Ravenswood*, 323 NLRB at 667 (Board noted the "responsibility… to hire part-time employees, to schedule and assign employees, to approve overtime, to grant time off, to impose and recommend discipline, to evaluate employees and recommend their promotion, and to resolve and handle formal and informal employee grievances, constitutes significant evidence of local authority over employees' status such that centralized control over other matters does not overcome the appropriateness of a single-store unit."); *Renzetti's Market.*, 238 NLRB at 174, 175 (Board found merit to petitioner's contention that such factors as centralized administrative control, uniform fringe benefits, and interdependence of the stores' operations were outweighed by the "factor which is of chief concern to the employees," that is, the day-to-day working conditions, including discipline, scheduling, requests for leave, and handling routine grievances); *Walgreen Co*., 198 NLRB 1138, 1138 (1972) (finding store manager's autonomy significant where district managers visited individual store, at best, monthly, and manager had authority for most hiring). See also *Bud's Thrift-T-Wise*, 236 NLRB 1203, 1204 (1978) (finding that, although central labor policies circumscribed authority, store managers exercised autonomy in interviewing, scheduling, granting time-off, adjusting grievances, evaluating employees, and making effective recommendations for hiring, discipline, and firing).

I have considered the cases cited by the Employer and find them distinguishable from the instant facts. In the cited cases, upper-level management was more present and involved at the local level and local management's authority was more circumscribed than here. See *McDonald's*, 192 NLRB 878 (1971) (upper-level management were at restaurants on daily basis, were responsible for most discharges, granted all promotions, and set the vacation schedule for all restaurants); *Twenty-First Century Restaurant of Nostrand Avenue Corp*., 192 NLRB 881 (1971) (Board found the location manager's discretion "is carefully monitored by the field supervisor who visits each location daily and the general manager who makes frequent visits" and upper-level manager transferred employees from location to location as circumstances warranted); *White Castle System, Inc.* 264 NLRB 267 (1982) (district supervisors visited restaurants daily to ensure

policies properly implemented, participated in creating employee work schedules, their approval was required for hiring, and in many instances discipline issued by local supervision was rescinded after investigation and review by higher management); *Nakash, Inc*., 271 NLRB 1408 (1984) (high-level management in local stores on a daily basis, reviewed all hiring decisions and approved all employees' vacation schedules); *Super X Drugs of Illinois, Inc*., 233 NLRB 1114 (1977) (district manager conducted initial interviews and possessed authority to hire, set hours and schedules, conducted employee reviews, directly involved in routine grievances and district manager's approval required for discipline, leaves of absences, promotions and raises); *Kirlin's Inc. of Central Illinois*, 227 NLRB 1220 (1977)(upper-level management handled scheduling, district manager reviewed all applications before hiring and shared final authority with corporate office to fire employees); *Big Y Foods, Inc*., 238 NLRB 860 (1978) (upper-level management on locations multiple times per week, resolved grievances, evaluated employee performance and were responsible for interviewing and selecting prospective employees).

Based on the foregoing, I find that the store manager is vested with considerable autonomy over a wide range of daily operational and labor matters despite the existence of centralized tools, policies and procedures.

**B. Employee Skills, Functions and Working Conditions**

The employees' skill and functions are virtually identical throughout the Denton market and the nation. As to be expected in a large retail chain, employees are subject to the same rules, policies and procedures established at the corporate level. The same tenure-based wages and employee benefits are granted to all employees. There is little to distinguish the Denton store employees' terms of employment from any others across the country. I note that the Denton market unit sought by the Employer does not overlap with the Employer's own internal division of "area" or "districts."

It is well established that the standardization of centrally established benefits, while significant, should not overshadow other important considerations, such as infrequent interchange and separate immediate supervision, where the uniformity is not greater than is characteristic of retail chain store operations generally. *Haag Drug Co*., 169 NLRB 877, 879- 880 (1968). Here, the differences in employees' skills, job functions and working conditions are minimal among stores throughout the United States and fail to distinguish the petitioned-for store or the Denton market from any other grouping of stores. Thus, I accord minimal weight to the significance of the Employer's standardized wages, working conditions and the uniform skills that are to be expected in a national retail chain.

**C. Employee Interchange**

Employee contact is considered interchange where a portion of the workforce of one facility is involved in the work of the other facility through temporary transfers or assignments of work. To rebut a single facility presumption, a party must establish that a significant portion of the workforce is involved in the interchange and the workforce must be actually supervised by the local branch to which they are not normally assigned. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). The Board found significant interchange where during a year period there were about 400-425 temporary employee interchanges among three terminals in an 87-person workforce

and employees were supervised directly by the manager where the work was performed. *Dayton Transport Corp*. 270 NLRB 1114 (1984).

Moreover, proffered instances of temporary assignments are of little evidentiary value unless given some meaningful context. *Waste Management Northwest*, 311 NLRB 309, 310 (2000) Where the amount of interchange is unclear both as to scope and frequency because it is uncertain how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. *Cargill, Inc*., 336 NLRB 1114 (2001); *Courier Dispatch Group*, 311 NLRB 728, 731 (1993).

It is also well established that voluntary interchange is given less weight than mandated transfers. *Starbucks (Mesa*), 371 NLRB slip op. 1 fn. 5 citing *New Britain Transportation*, 330 NLRB at 398; *D&L Transportation, Inc*., 324 NLRB 160, 162 fn.7 (1997); *Red Lobster* 300 NLRB at 911 ("the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary"). Additionally, permanent transfers is a "less significant indication of actual interchange than temporary transfers." *Red Lobster*, 300 at 911.

As set forth in the foregoing facts section, the Employer presented numerous graphs and charts in an effort to establish sufficient evidence of employee interchange. Initially, I find that the evidence failed to support the Employer's suggestion that employees are sometimes mandated to work shifts outside of their home store. See, *Starbucks (Mesa I*), 371 NLRB slip. op. 1 fn. 5. Indeed, Kuenstler testified that shifts are borrowed on a voluntary basis within the district. Likewise, nothing in the Employer's data indicates that borrowing was involuntary and there was no evidence of discipline issued to employees for failing to work a mandated shift outside of their home store.

In its brief, the Employer maintains that the Board should focus on evidence showing that its staffing model is designed to ensure that staffing needs are met by employees working in multiple stores. I note, however, that the Petitioner's witnesses rarely worked at other stores and the interchange data did not reveal regular employee interchange. More importantly, I am obligated to follow extant Board law, which attributes less weight to voluntary transfers than involuntary transfers.

The Employer's statistics presented here share many of the same shortcomings identified by the Board *Starbucks Mesa I* and other cases. Much of the Employer's data pertains to the Denton market as a whole, rather than the petitioned-for store.[26] Under the Employer's analysis, working outside of the home store on just one occasion during the 35-month relevant period constitutes being "borrowed," while it does not shed light on how often the employees at the petitioned-for store worked at other stores or the number of hours worked. Likewise, the data did not show how often, or the number of hours, borrowed employees worked at the petitioned-for store. As noted, the Employer did not provide an analysis disclosing the percentage of hours/shifts that borrowed employees from Denton stores worked at the petitioned-for store or the percentage of shifts/hours

[26] See *Friendly Ice Cream*, 705 F.2d at 579 ("Evidence as to employee interchanges not involving the [petitioned-for store], however, did not bear directly on the issue of the appropriateness of the [petitioned-for] unit").

that petitioned-for employees worked at other Denton stores. Similarly, regarding the data illustrating that on about 10 percent of store days Store 16766 borrowed an employee, this analysis does not reveal the number of employees, shifts or hours borrowed.

In addition to these shortcomings, the data relied on by the Employer simply does not reflect frequent employee interchange. For example, the average percent of "partner-days" borrowed across the market was a mere 0.7 percent. In short, the Employer's evidence failed to adequately demonstrate that employees at the petitioned-for store regularly or frequently interchange with employees of other stores in the Denton market.

The analysis presented by Petitioner reveals that the hours worked by borrowed employees from other Denton stores at the petitioned-for store during the fiscal year thus far only amounted to 0.42 percent of total hours worked and 0.46 percent of total shifts worked. Moreover, petitioned-for employees have worked only 0.25 percent of hours and 0.3 percent of shifts at other Denton stores. Further, the evidence reflects that borrowing is not limited to the Denton market. Indeed, its analysis disclosed that the petitioned-for store borrowed in greater numbers from district stores outside of the Denton market (as a group) and petitioned-for employees were borrowed more by non-Denton stores (as a group) than Denton stores (as a group).

Such a minimal amount of interchange is wholly insufficient to establish that a single-facility's homogeneity of employees has been destroyed, or to rebut the single-facility presumption. *Haag Drug Co.*, 169 NLRB 877 (1968) (To overcome a single-facility presumption employee interchange must be substantial and "destructive of homogeneity" in a petitioned-for unit). The levels of interchange here are less than the amount of employee interchange which the Board found lacking in many prior cases involving this Employer. See *Starbucks (Mesa I)*, 371 NLRB No. 71, slip op. 1.

Apart from the minimal amount of employee interchange, there is little evidence of regular contact between employees of different Denton stores outside of addressing inventory shortages and instances of employees from other stores in the district being trained at the petitioned-for store. See *Hilander Foods*, 348 NLRB at 1203 ("There is no evidence … employees have had frequent contact with employees at the other facilities as a result of central training, central meetings, community service projects, or the newsletter"); *Eschenbach-Boysa*, 268 NLRB at 551 (finding single-store units appropriate notwithstanding that "[o]nce or twice a week, uniforms, small equipment, or food is transferred between the two restaurants to relieve temporary shortages"). Accordingly, I find that the level of employee interchange strongly supports the petitioned-for single-facility unit.

**D. Distance Between Locations**

As noted above, the stores at issue in this matter range from 1.6 to 8 miles from Store 16766. The Board has found single-facility units with similar distances to other facilities to be appropriate for collective-bargaining. See *Lipman's* 227 NLRB 1436, 1438 fn. 7 (1977) (facilities two miles apart); *Renzetti's Supermarket* 238 NLRB 174, 174 (1978) (facilities four miles apart). Consistent with these cases, I find that stores in the Denton market are not so proximate to weigh in favor of a citywide unit.

### E. Bargaining History

The absence of bargaining history is a neutral factor in the analysis of whether a single unit facility is appropriate. *Trane,* 339 NLRB supra at 868, n. 4; See also *Red Lobster*, 300 NLRB at 12. Thus, the fact that there is no bargaining history in this matter does not support nor does it negate the appropriateness of the unit sought by the Petitioner.

The Employer further argues that holding a petitioned-for single store unit to be appropriate contravenes Section 9(c)(5) of the Act because it gives controlling weight to the Petitioner's extent of organization.[27] As stated previously, the Board has long relied on a single store presumption and consideration of the Petitioner's extent of organizing, among other factors, is proper. *San Miguel Hospital Corporation v. NLRB*, 697 F.3d 1181, 1185 (D.C. Cir. 2012). The Employer's reliance on *Quality Food Markets, Inc*., 126 NLRB 349, 350 (1960); *Malco Theatres, Inc*., 222 NLRB 81, 82 (1976) and *Kansas City Coors*, 271 NLRB 1338, 1389-1390 (1984) is misplaced since nothing in those decisions suggests that the application of the longstanding single-store presumption violates Section 9(c)(5).

In its brief, the Employer also relatedly contends that the Petitioner's attempt to organize a single store in the Denton market is not conducive to stable labor relations. I note that while "chainwide uniformity may be advantageous to the employer administratively, it is not a sufficient reason in itself for denying the right of a separate, homogeneous group of employees, possessing a clear community of interest, to express their wishes concerning collective representation." *Haag Drug*, 169 NLRB at 878. I also disagree with the Employer's contention that the Denton stores are operated on a city-based level. There was little to no evidence showing that these four stores are organized or controlled as a distinct city market, and as noted, they do not comport with any Employer administrative grouping. Contrary to the Employer, I conclude the single-facility unit found appropriate would not create a "fictional mold within which the parties would be required to force their bargaining relationship," *Harry T. Campbell Sons' Corp*. 407 F.2d 969, 979 (1969), inasmuch as Store 16766 management has significant control over operational and labor relations matters, and there is little employee integration among the Denton stores, bolstering a finding of a single-store unit which has long been held presumptively appropriate.

Therefore, based on the record and relevant case law, I find that the Petitioner's petitioned-for single unit limited to Store 16766 is appropriate and that the Employer did not provide sufficient evidence to rebut the single-facility presumption.

### F. Method of Election

The Board has held that the mechanics of an election, such as the date, time, and place, are left to the discretion of the Regional Director. *Ceva Logistics U.S., Inc.,* 357 NLRB 628 (2011); *Manchester Knitted Fashions*, Inc., 108 NLRB 1366, 1366 (1954). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries*, *Inc.,* 326 NLRB 470, 471 (1998).

[27] Section 9(c)(5) states that "[i]n determining whether a unit is appropriate . . . the extent to which the employees have organized shall not be controlling." 29 U.S.C. § 159(c)(5).

It is well established, however, that the Board has a strong preference for conducting manual elections. *San Diego Gas & Electric*, 325 NLRB 1143 (1998). Yet, it also has a history of conducting elections by mail when necessary. As the Board noted in *London's Farm Dairy*, *Inc.,* 323 NLRB 1057 (1997), "[f]rom the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail."

In response to the evolving realities of the pandemic, on July 6, 2020, the Office of the General Counsel issued *Memorandum GC 20-10*, "Suggested Manual Election Protocols" Setting forth detailed suggested manual election protocols. Thereafter, the Board, in *Aspirus Keweenaw*, 370 NLRB No. 45 (November 9, 2020), outlined factors to consider when assessing the risk associated with the pandemic and the propriety of a mail-ballot election. In so doing, the Board reaffirmed its longstanding policy favoring manual elections, but identified six situations, the existence of any of which, would suggest the Regional Director should direct a mail-ballot election. Those situations are as follows:

1. The Agency office tasked with conducting the election is operating under "mandatory telework" status.

2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher.

3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size.

4. The employer fails or refuses to commit to abide by the General Counsel's protocols for Manual Elections established in GC Memo 20-10.

5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status. or

6. Other similarly compelling circumstances.

The Board indicated that a Regional Director who exercises discretion to direct a mail-ballot election when one or more of these situations exists will not have abused his or her discretion. *Id*. slip op. at 8.

In view of the criteria set forth by the Board, above, I note that the Regional office responsible for conducting this election is not operating under a mandatory telework status. There is no mandatory state or local health orders related to maximum gathering size. There is no indication that there a current COVID outbreak at the Employer's facility and the Employer indicated it will provide the necessary certifications in this regard. The Employer also affirmed that it would abide by the General Counsel's safety protocols. Therefore, these factors support conducting a manual election. However, the criteria that either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, *or* the

14-day testing positivity rate in the county where the facility is located is 5 percent or higher suggest the propriety of a mail-ballot election in this case.

A review of the data for Denton County, where the store is located, reflects the 7-day positivity rate is 11.93 percent.[28] The chart below reflects the number of new cases over the prior 14 days.[29] This data reflects a general upward 14-day trend in the number of new confirmed COVID cases. I note that the 4 days with zero cases are Saturdays and Sundays.

| -14 | -13 | -12 | -11 | -10 | -9 | -8 | -7 | -6 | -5 | -4 | -3 | -2 | -1 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 69 | 79 | 86 | 0 | 0 | 98 | 105 | 94 | 92 | 96 | 0 | 0 | 130 | 144 |

In accord with *Aspirus*, I conclude that the positivity rate in Denton County, which is well above 5 percent, warrants a mail ballot election. The upward trend in the number of new COVID cases over the prior 14 days also supports the propriety of a mail ballot election. Therefore, based on the foregoing law, guidelines, and relevant COVID data, and to ensure the safety of all participants in an election during this continuing pandemic, I will direct a mail ballot election.[30]

## IV. CONCLUSION

In determining that the single-store unit sought by Petitioner is appropriate, I have carefully considered the record evidence and weighed the various factors that bear on the determination of whether a single-facility unit is appropriate. In particular, I rely on the degree of local autonomy in operations and labor relations and lack of significant interchange in reaching my conclusion that the single-facility unit sought by Petitioner is appropriate.

Under Section 3(b) of the Act, I have the authority to hear and decide the matter on behalf of the Board. Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find that the Employer is an employer engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[31]

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[28] See CDC Covid Tracker data through Saturday, May 14, 2022 (last checked May 18, 2022). In addition, the percent change in the last 7 days was 3.26 percent- https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Texas&data-type=CommunityLevels&list_select_county=48121

[29] See Johns Hopkins COVID-19 Status Report (last updated May 18, 2022) -https://bao.arcgis.com/covid-19/jhu/county/48121.html

[30] Given my decision to direct a mail bail election because of the 7-day percent positivity rate and upward trend in new COVID cases, I find it unnecessary to decide the merits of the Petitioner's other bases for seeking a mail ballot election.

[31] The parties stipulated, and I find that the Employer, Starbucks Corporation, a Washington corporation with headquarters located in Seattle, Washington, and facilities located throughout the United States, is engaged in the

3. The parties stipulated, and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. I find in accord with the parties' stipulation that there is no collective-bargaining agreement covering any of the employees in the unit sought in the petition herein, and there is no contract bar or other bar to an election in this matter.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act (the Unit):

> **INCLUDED**: All full-time and regular part-time baristas and shift supervisors employed by the Employer at Store 16766 located at 2320 W. University Drive, Denton, Texas 76201.
>
> **EXCLUDED**: Office clerical employees, store managers, professional employees, guards, and supervisors as defined in the Act.
>
> **OTHERS PERMITTED TO VOTE:** At this time, no decision has been made regarding whether employees classified as Assistant Store Managers who are employed at the Employer's Store 16766 are included in, or excluded from, the bargaining unit. Individuals in this classification may vote in the election but their ballots shall be challenged since their eligibility has not been determined. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.[32]

## V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Workers United.**

### A. Election Details

On **Wednesday, June 1, 2022, at 4:45 p.m. (CST)**, the ballots will be mailed to employees in the appropriate bargaining unit by a designated official from the National Labor Relations

retail operation of restaurants. The four facilities involved in the instant case are part of District 0650 and are the four corporate-owned Employer facilities in Denton, Texas. The parties further stipulated that in the past 12 months, a representative period, the Employer derived gross revenues in excess of $500,000 and purchased and received at each of these four Denton corporate-owned stores goods valued in excess of $5,000, which goods were shipped to these facilities directly from points located outside the state of Texas.

[32] As noted above, at the time of the hearing, there was one Assistant Store Manager at Store 16766.

Board, Region 16. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Monday, June 13, 2022**, should communicate immediately with the National Labor Relations Board by either calling the Region 16 Office at (817) 978-2921 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 16 Office by **4:45 p.m. (CST) on Thursday, June 23, 2022**. All ballots will be commingled and counted by Regional 16 of the National Labor Relations Board on **Thursday, June 30, 2022, at 2:00 p.m. (CST)** with participants being present by videoconference provided the count can be safely conducted on that date and at the Regional Director's discretion. No party may make a video or audio recording or save any image of the ballot count. In order to be valid and counted, the returned ballots must be in an envelope signed by the voter and must be received in the Region 16 Office prior to the counting of the ballots.

### B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **May 15, 2022**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.[33] In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

[33] The parties stipulated to use this formula as set forth in *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1970), to determine voter eligibility.

### C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, May 24, 2022**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**[34]

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

### D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.

[34] The Petitioner agreed to waive 7 of the 10 days that it is entitled to have the voter list prior to the election.

For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

## RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

**DATED** in Fort Worth, Texas on this 20th day of May 2022.

Timothy L. Watson
Regional Director
National Labor Relations Board
Region 16
Fritz G. Lanham Federal Building
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Fort Worth, Texas 76102-6107